IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.739 OF 1995
WITH
CIVIL APPLICATION NO. 313 OF 2001

The Christian Medical and
Education Fellowship Trust & Anr. ..Applicants.

V/s.

Krishnarao Pingale & Anr. ..Respondents.

Mr.S.M.Shah with Satyendra R. Pagdhare for applicants.

Mr.R.M.Haridas for Mr.P.N.Joshi for respondent Nos. 1a, 1b, 1c, 1e.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 2, 2006.

P.C. :

1. Heard counsel for the parties.

2. This revision application takes exception to the Judgment and Order passed by the Competent Authority, Nashik Division, Nashik Road, Court under Rent Control Act, dated May 30, 1995. By this order the application filed by the applicant-owner of the disputed premises, for relief of possession on the ground that the license agreement between the parties had expired and inspite of that original respondent continued to occupy the suit premises, thus invoking remedy under section 13(A-2) of the Bombay Rents,

Hotel and Lodging Rates Control Act, was rejected.

3. The Court below amongst other has found that the document, which is pressed into service by the applicant owner Exh.20 dated 12th August, 1988 clearly provides that the accommodation was given to the original respondent till he was in service as Supervisor in Manoram Sadan School, Manmad. From the said document Exh. 20, two things would emerge. Firstly, that the original respondent was in service of the applicant licensor as a Supervisor in Manoram Sadan School, Manmad at the relevant time; and secondly, he was permitted to use and occupy the suit premises while in service. The Court below has noted that the original respondent while in the service or employment of the licensor is excluded from the expression licensee under section 5 (4A) of the Act. On that finding the Court below has noted that remedy under section 13(A-2) of the Act cannot be invoked in such situation. Indeed, the Court below has went on to doubt the genuineness of the lease agreement. The applicants may be justified in contending that it was not open to the Competent Authority to enter upon that issue, which would permit the parties to raise question regarding genuineness of the licence agreement themselves. That is on account of mandate

of subsection 3 of section 13(A-2), which provides that Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence. However, explanation below said subsection, in particular clause (b) thereof stipulates that an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

4. Be that as it may, as mentioned earlier, the crucial issue which is addressed by the lower Court about the availability of action under section 13(A-2) of the Act against the original respondent as he was not covered by the expression "licensee". That finding and conclusion in my opinion is unexceptionable. If it is so, no other question raised in the revision application deserves to be addressed in this Judgment.

5. To re-iterate the findings noted by the Competent Authority I will straightway advert to the licence agreement Exh. 20. Relevant portion of the said agreement is reproduced thus:

> "In consideration of the Licencee rendering to the LICENSOR his Services as a Supervisor in Manoram Sadan School, Manmad(which institution is under the management and the

> control of the LICENSOR and which entire property vests in the LICENSOR) and of the LICENCEE agreeing to abive by the terms and conditions contained in the Form of Undertaking append to this LEAV AND LICENCEE AGREEMENT and which FORM OF UNDERTAKING will be construed as part and parcel of this LEAV AND LICENCE AGREEMENT."

This document is pressed into service by the applicants. It is not open to the applicants to now contend that the original respondent was not in service at the relevant time or that he had retired at the age of superannuation but was given extension from time to time. The fact stated in this agreement clearly establishes that the original respondent was offered accommodation in lieu of service quarter while in service. If it is so, such a case is not covered by the Scope of Section 13 (A-2) of the Act, as person in service or in employment of the licensor is excluded from the expression licensee under section 5(4)(a) of the Act. Thus understood, the ultimate conclusion reached by the Competent Authority in rejecting the application preferred by the applicants will have to be upheld.

6. It will be open to the applicants to take recourse to such other remedy against the original respondent or his descendants in accordance with the

law, as may be advised. Those proceedings will have to be considered on its own merits in accordance with the law, uninfluenced by the observations made in this order. Opinion recorded in this order is only for the limited purpose of considering whether remedy under section 13(A-2) of the act is available to the applicants against the original respondent. No more and no less. I am not therefore, expressing any opinion with regard to the correctness of the stand taken by the respondents that in fact the original respondent was tenant and not licensee. All these questions will be considered in appropriate proceedings.

7. Revision application disposed of on the above terms. No order as to costs.

8. In view of the order passed civil application disposed of accordingly.